IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Crl.MC.No. 2493 of 2007()

CMP.1266/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER:

BADKU SOREN @ SANJAY,
S/O.SUKU SOREN, SIJUA VILLAGE, GHORANJI,P.S.DEORI,
GRIDIV DISTRIC, JHARKHAND STATE.

BY ADV. SRI.WILSON URMESE
SRI.M.C.ANTONY

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING THE SUB INSPECTOR OF POLICE,
ANGAMALY.

BY ADV. SRI. S.U. NAZER, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2493 Of 2007

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Dated this the 6th day of August, 2007

ORDER

Petitioner claims to be the father / parent of a girl who was produced before the Judicial First Class Magistrate Court -II , Aluva. The girl is allegedly a child in need of care and protection. The petitioner's application for custody of the child has been rejected by the learned Magistrate by two orders, copies of which have been produced along with the petition as Annexure B and D- dated 17.5.07 and 31.5.07. The petitioner has come to this Court complaining about Annexure B and D orders dated 17.5.07 and 31.5.07.

2. I have sympathy to the petitioner if he is really the father of the girl. But I have sympathy for the girl if he is not really her father, and is only trying to get the girl into his custody for exploitation. That controversy has to be adequately resolved. Appropriate materials/evidence must be placed before the learned Magistrate. It is said that the child was working as a maid servant in the house of a particular person who had complained about the missing of the girl, consequent to which the FIR had been

registered. Surprisingly the statement of the said person has not been adduced. I must assume that the said person must be in a position to state before the Court whether the petitioner is really the father of the girl or not. The version of the girl can also be ascertained. The age of the girl has got to be ascertained to decide the worth and value of her statement about her relationship with the petitioner. The report of the probationary officer (local) can be insisted by the learned Magistrate. The Probationary Officer can be directed to contact his counterpart of the place of residence of the petitioner in Jharkhand, so that competent assessment about the claim of the petitioner can also be made.

3. I am satisfied that further opportunity must be given to the petitioner to adduce all such evidence which he wants to adduce in support of his case. The learned Magistrate must also, in a pro active manner, try to ascertain all relevant details from every possible source so that competent humane decision on the question whether the child deserves to be released from custody can be taken by the learned Magistrate. The impugned order dated 31.5.07 can in these circumstances be set aside with a direction to

the learned Magistrate to consider the question fresh after giving the petitioner adequate opportunity to substantiate his case. The learned Magistrate must make all possible efforts to collect the relevant information on the vital aspects.

4. This petition is in these circumstances allowed. The order dated 31.5.07 in C.M.P.No.1266/07 is set aside. The learned Magistrate is directed to dispose of the matter afresh in the manner indicated above. Needless to say the learned Magistrate must show a sense of expedition to dispose of the matter at the earliest. The petitioner shall be entitled to produce all relevant documents including the original of Annexure E before the learned Magistrate.

(R.BASANT, JUDGE)

sj